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11 Attorneys for Defendant
TEESPRING, INC.

18 DIANE BLACKMAN, et al.,
19 Plaintiffs,
20 v.
21 TEESPRING, INC., et al.,
22 Defendants.

CASE NO.: 3:19-cv-01494-TSH

**TEESPRING, INC.'S NOTICE OF
RENEWED MOTION AND RENEWED
MOTION TO SEVER**

Judge: Hon. Thomas S. Hixson
Hearing Date: June 20, 2019
Time: 10:00 a.m.

1 **NOTICE OF RENEWED MOTION AND RENEWED MOTION TO SEVER**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on June 20, 2019 at 10:00 AM, or as soon thereafter as
4 this matter can be heard before the Honorable Thomas S. Hixson of the United States District
5 Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA
6 94102, Courtroom A - 15th Floor, Defendant Teespring, Inc. (“Teespring”) will and hereby does
7 renew its motion for an order severing all plaintiffs except Plaintiff Diane Blackman for
8 misjoinder.¹ The renewed motion is based upon this Notice; the accompanying Memorandum of
9 Points and Authorities in support thereof; the pleadings, records, and papers on file in this action;
10 oral argument of counsel; and any other matters properly before the Court.

11 **STATEMENT OF REQUESTED RELIEF**

12 Pursuant to Federal Rule of Civil Procedure 21, Teespring requests that the Court sever
13 all but the first-named plaintiff (Diane Blackman) from this action.

14 **STATEMENT OF ISSUES TO BE DECIDED**

15 1. Whether all but the first-named plaintiff should be severed from this action for
16 improper joinder because the Complaint joins the claims of twenty-eight separate plaintiffs who
17 have no connection to the same transaction or occurrence.

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. INTRODUCTION**

20 Defendant Teespring, Inc. (“Teespring”) renews its motion to sever all but the first-
21 named plaintiff (Diane Blackman) from this action for improper joinder because none of

22
23 1 While the Complaint should also be dismissed under Rule 12(b)(6) for failure to state a claim,
24 in the interests of judicial efficiency—the avoidance of explaining pleading defects for more than
25 5,000 asserted infringements for 28 individual plaintiffs—this motion is limited to the issue of
26 severance. Should further motion practice become necessary, Defendant reserves the right to file
27 a motion under Rule 12(b)(6) on the grounds that Plaintiffs’ claims are barred by 17 U.S.C.
28 §§ 102, 103, 411(a), 412, 512(c); by the Teespring Terms of Service; and by the Supreme
Court’s recent decision in *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881 (2019), which held that a copyright owner may not file an infringement suit until the
copyright at issue has been registered, among other grounds that may apply to individual
plaintiffs in this action.

1 Plaintiffs' claims has any connection in this action other than the fact that all Plaintiffs allege
 2 copyright infringement (in separate transactions) by Teespring. Teespring previously made this
 3 motion prior to transfer of this action from the Central District of California to this Court, but the
 4 motion was denied without prejudice in light of that court's decision to grant Teespring's Rule
 5 12(b)(3) motion to transfer for improper venue. Teespring therefore renews its motion with this
 6 Court.

7 **II. BACKGROUND**

8 **A. The Teespring Service**

9 Teespring provides an online service at www.teespring.com where creators can upload
 10 their designs and offer them to be printed on tee-shirts and similar apparel for purchase by
 11 themselves or other users. Teespring prohibits copyright infringement on its service and requires
 12 creators to "represent and warrant that [they] own or are the licensee[s] of all trademark rights,
 13 copyrights, rights of publicity and other intellectual property or other proprietary rights necessary
 14 to create and conduct [a] campaign." *See* Teespring Terms of Service, available at
 15 <https://teespring.com/policies/terms>. Teespring also responds expeditiously to notices of claimed
 16 infringement submitted under the Digital Millennium Copyright Act (17 U.S.C. § 512(c)) and
 17 terminates the accounts of repeat infringers in appropriate circumstances. Teespring is
 18 headquartered in San Francisco, California. Compl. ¶ 33.

19 **B. The Twenty-Eight Plaintiffs**

20 Plaintiffs are twenty-seven individuals and one corporation who allege to own various
 21 copyrights individually. While Plaintiffs allege they own "over 1,000" copyrighted works,
 22 Compl. ¶ 36, they do not attach a single copyright registration certificate (or registration or
 23 application number) to their Complaint for any of the alleged copyrights asserted in this action.
 24 None of the asserted copyrights is owned jointly by any two or more plaintiffs, and none of the
 25 twenty-eight plaintiffs has any other alleged connection with any other plaintiff in this action
 26 except for the fact that each one is suing Teespring.

27 Only ten of the twenty-eight plaintiffs reside in the United States. Compl. ¶¶ 5-32. The
 28 other eighteen of the twenty-eight plaintiffs are residents of various foreign nations from around

1 the world. *Id.* It is unclear whether any of the asserted copyrighted works were first published in
 2 the United States or a foreign country, or whether any work belonging to a foreign citizen was
 3 authored at a time when the author of the work was residing in the United States (as required for
 4 a determination regarding applicable law).

5 Plaintiffs allege that their asserted works were infringed by designs uploaded by third-
 6 party users to the Teespring website. Compl. ¶¶ 5-32. Although these allegedly infringing
 7 designs were created and submitted to the Teespring service by third-party users and not by
 8 Teespring, Plaintiffs have sued Teespring because it is the host of the online service and
 9 allegedly fulfilled any product orders placed by users. At least one of the plaintiffs, and
 10 potentially more, is a user of the Teespring service and has previously agreed to be bound by the
 11 applicable Teespring Terms of Service, pursuant to which they waived any claims of
 12 infringement against Teespring. *See* Teespring Terms of Service.

13 **C. Prior Proceedings in the Central District of California**

14 Plaintiffs originally filed suit against Teespring in the Central District of California. On
 15 January 25, 2019, Teespring moved to sever all but the first-named plaintiff (Diane Blackman)
 16 from this action for improper joinder. *See* Dkt No. 11. Contemporaneously, Teespring moved to
 17 dismiss the action for improper venue because Teespring is not a resident of the Central District
 18 of California, or, in the alternative, to transfer venue to the Northern District of California. *Id.*

19 On March 19, 2019, the District Court for the Central District of California granted
 20 Teespring's motion for improper venue and transferred the action to this Court. *See* Dkt. No. 23.
 21 In light of its order granting the motion for improper venue, the court denied Teespring's motion
 22 to sever without prejudice so that Teespring could renew its motion in this Court after transfer.
 23 *Id.*

24 **III. THE MOTION TO SEVER SHOULD BE GRANTED BECAUSE PLAINTIFFS'
 25 SEPARATE CLAIMS DO NOT ARISE FROM THE SAME TRANSACTION OR
 OCCURRENCE**

26 Multiple plaintiffs may not join their claims in a single action unless they assert a "right
 27 to relief jointly, severally, or in the alternative with respect to or arising out of the same
 28 transaction, occurrence, or series of transactions or occurrences" and there is a "question of law

1 or fact common to all plaintiffs.” Fed. R. Civ. P. 20(a). Where these two requirements are not
 2 satisfied, the misjoined parties should be severed from the action. *Coughlin v. Rogers*, 130 F.3d
 3 1348, 1350 (9th Cir. 1997). And even where these two requirements are satisfied, the Court still
 4 “must examine whether permissive joinder would comport with the principles of fundamental
 5 fairness or would result in prejudice to either side.” *Coleman v. Quaker Oats Co.*, 232 F.3d 1271,
 6 1296 (9th Cir. 2000). Here, the Complaint violates the Federal Rules by attempting to join the
 7 claims of twenty-eight separate plaintiffs who have no connection to the same transaction or
 8 occurrence.

9 Even if they had attempted to do so, Plaintiffs could not make the required showing that
 10 joinder is proper here because the single transaction requirement “is not met where plaintiffs
 11 would have to prove their claims ... on an individualized basis.” *Corley v. Google, Inc.*, 316
 12 F.R.D. 277, 283-87 (N.D. Cal. 2016) (severing claims of plaintiffs alleging Google
 13 systematically violated the Wiretap Act by intercepting and scanning their emails); *Todd v.*
 14 *Tempur-Sealy Int'l, Inc.*, No. 13-cv-04984-JST, 2017 U.S. Dist. LEXIS 102382, at *8-11 (N.D.
 15 Cal. June 30, 2017) (severing claims of plaintiffs “for the same reasons that class certification
 16 was not proper”: “there are important, individualized questions that must be answered about
 17 Plaintiffs’ separate claims”).

18 In this action, every one of the Plaintiffs would have to separately and individually prove
 19 each element of the cause of action for copyright infringement: (i) the plaintiff’s ownership of a
 20 valid copyright, (ii) the defendant’s access to the copyrighted work, (iii) substantial similarity
 21 between the copyrighted work and the accused work, and (iv) actual damages or entitlement to
 22 statutory damages. *See Funky Films, Inc. v. Time Warner Entm’t Co., L.P.*, 462 F.3d 1072, 1076
 23 (9th Cir. 2006). The evidence needed to prove each of these elements will be different for every
 24 one of the twenty-eight plaintiffs because they each assert different infringements of different
 25 copyrights in different transactions.

26 In addition, a review of the asserted works in this action and the lack of factual
 27 allegations to support Plaintiffs’ claims reveal that most if not all of the claims asserted by
 28 Plaintiffs will turn on unique issues that vary among the different plaintiffs, who include

1 eighteen non-U.S. residents asserting unregistered works. These issues, which cannot be
2 addressed efficiently in a single consolidated action, include the following dispositive issues:

- 3 - Whether a plaintiff's asserted work qualifies as an original work of authorship
4 sufficient to satisfy the requirements for copyrightability;
- 5 - Whether a plaintiff's asserted work is a derivative work not entitled to protection
6 because it was created without authorization from the original copyright owner;
- 7 - Whether a plaintiff's asserted work was first published in the United States and
8 subject to registration requirements in the U.S.;
- 9 - Whether a plaintiff's asserted works are subject to an international treaty;
- 10 - Whether a plaintiff's asserted works are a work of joint authorship;
- 11 - Whether a plaintiff has registered the asserted works with the Copyright Office;
- 12 - Whether a plaintiff's registration application has been rejected;
- 13 - Whether a plaintiff has agreed to be bound by the Teespring Terms of Service and
14 waived claims of infringement against Teespring;
- 15 - Whether any of the asserted works were uploaded to the Teespring site by one of the
16 plaintiffs themselves;
- 17 - Whether the printing of any products from the Teespring site was done at the
18 direction of a plaintiff or another authorized person;
- 19 - Whether a plaintiff's asserted work was uploaded to the Teespring service by a third
20 party with a license or other right to do so;
- 21 - Whether a plaintiff's asserted works were removed from the Teespring service prior
22 to the printing of any tangible products;
- 23 - Whether a plaintiff is estopped by failing to send Teespring a timely takedown
24 request to prevent infringement after noticing a work had been uploaded to the
25 Teespring site by a third-party user;
- 26 - Whether a plaintiff can satisfy the statutory prerequisite for statutory damages;
- 27 - Whether a plaintiff can prove actual damages and the measure of actual damages; and

28

1 - Whether or not the frivolousness of any one claim or defense of a claim will warrant
2 an award of attorney's fees under 17 U.S.C. § 505 to the party that prevails on that
3 claim.

4 In light of the predominance, if not complete dominance, of individual issues in
5 Plaintiffs' claims, joinder of the Plaintiffs in a single action is not proper.

6 **IV. CONCLUSION**

7 For the foregoing reasons, all plaintiffs except for plaintiff Diane Blackman, the first-
8 named plaintiff, should be severed from this action.

9
10 Dated: April 2, 2019

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

11
12 By: /s/ Anthony J Weibell
Anthony J Weibell

13 Attorneys for Defendant
14 TEESPRING, INC.

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